

The Brooklyn Hospital Center and Local 1199, Drug, Hospital and Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO, Petitioner and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO and Local 819, International Brotherhood of Teamsters, AFL-CIO (Intervenor, Case 29-RC-7143 only), Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Intervenor, Case 29-RC-7143 only), Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO (Intervenor, Case 29-RC-7148 only), and New York State Nurses Association (Intervenor, Case 29-RC-7150 only). Cases 29-RC-7143, 29-RC-7148, and 29-RC-7150

December 16, 1992

DECISION ON REVIEW AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The issue raised in this case concerns the appropriate units for collective bargaining at the Employer's Caledonian location. On petitions filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Administrative Law Judge Steven Davis. The case was then transferred to the Board pursuant to Section 106.67 of the National Labor Relations Board Rules and Regulations, and by the Regional Director's order of January 4, 1990.¹ Thereafter the Employer, the Petitioner, and the Intervenor filed briefs in support of their respective positions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Petitioner, by three separate petitions filed on January 27 and February 6 and 9, 1989, respectively, seeks to represent the following employees at the Employer's Caledonian facility: in Case 29-RC-7143 all service and maintenance employees and business office clericals; in Case 29-RC-7148 all technical employees; and in Case 29-RC-7150 all professional employees (including registered nurses).²

¹ The representation petitions were consolidated for hearing with the unfair labor practice complaints in Cases 29-CA-13793, 29-CA-13813, 29-CA-13842, and 29-CA-13933 and a hearing was opened on May 22, 1989. At the close of the hearing, the judge severed the representation petitions from the unfair labor practice cases, and the representation cases were transferred directly to the Board for decision. For a full discussion of the procedural history, see the decision of Judge Steven Davis in the companion unfair labor practice case. 309 NLRB 1163, issued this day.

² The petition in Case 29-RC-7150 states that the Petitioner seeks to represent all professionals. However, the Petitioner indicated on

The Intervenor are Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO (Local 144); New York State Nurses Association (NYSNA); Licensed Practical Nurses, Technicians and Health Care Workers of New York Inc., Local 721, Service Employees International Union, AFL-CIO (Local 721); and Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Local 3). They have intervened as to one or more of the petitions on the basis of their being parties to current collective-bargaining agreements for the units set forth in these petitions.³ Local 819, International Brotherhood of Teamsters, AFL-CIO, with whom the Employer has no contract, intervened with respect to Case 29-RC-7143 and is interested in participating in any election held in that unit.

The Board's final Rule for determining appropriate bargaining units in the health care industry, which became effective on May 22, 1989, sets forth the categories of appropriate units in the health care industry.⁴ The Petitioner, in its March 9, 1990 posthearing brief to the judge, recognizes that the petitions predate the final Rule for health care units, and states that it would be willing to go to elections in six of the units which accord with the Rule. These six units would be registered nurses; all professional employees, excluding registered nurses and physicians; technical employees; skilled maintenance employees; business office clericals; and service and other nonprofessional employees. The Intervenor has indicated they would participate in elections in one or more of these six units. Because the Petitioner and the Intervenor have indicated they are willing to go to an election in units which the Board has found to be appropriate units in accordance with the Health Care Rules, we find the units are the appropriate units here and that the election should be directed in those units.⁵

As a result of our determination that the election will be directed in units which differ from those which

the record in its posthearing brief that it does not seek to represent physicians.

³ The Board found, in *Brooklyn Hospital Center*, 309 NLRB 1163, that the Employer unlawfully recognized Local 144, NYSNA, Local 721, and Local 3, as the representatives of the Caledonian employees and unlawfully applied to these employees the collective-bargaining agreements covering the Employer's Brooklyn Hospital employees.

The Employer and Intervenor assert that the Caledonian employees are residual units to the Brooklyn Hospital units. Because we found in the unfair labor practice case that, in November 1988, the Caledonian employees constituted separate unrepresented bargaining units, we find no merit in that contention.

⁴ 29 CFR 103.54 FR No. 76 at 16347-16348, 284 NLRB 1580, 1576-1597 (1989).

⁵ We recognize that two of the petitions (Cases 29-RC-7143 and 29-RC-7150) are for combinations of these units. Because the Petitioner has in effect amended its petition by indicating that it is willing to go to an election in the smaller units set forth in the Health Care Rules, we need not decide whether the units as petitioned for are appropriate.

were sought in the petition and which were litigated at the hearing, there are issues such as the showing of interest and the unit placement of certain classifications of employees which cannot be resolved on the present record.⁶ In light of the above, we have decided to remand the case to the Regional Director for resolution

⁶The parties stipulated unit placement issues as to the petitioned-for larger units but not as to any of the smaller units.

of any remaining questions concerning the six units,⁷ and for the issuance of a Direction of Election.

ORDER

This case is remanded to the Regional Director for further processing in conformity with this opinion.

⁷We recognize that, in Case 29-RC-7148, the unit in which we have directed the election is identical to the petitioned-for unit and there are no apparent unresolved issues with respect to that unit. We, however, are also remanding that petition to the Regional Director so that he can resolve any unforeseen questions with respect to that unit.